

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5040 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? no

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

yes

5. Whether it is to be circulated to the Civil Judge?
No/

SHASHIKANT N DHABUWALA

Versus

BARODA RAYON CORPN. LTD

Appearance:

MR LN MEDIPALLY for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 09/10/96

ORAL JUDGEMENT

A short but interesting question which is placed in focus
is with regard to interpretation and applicability
Sections 33-C (2) and 10 of the Industrial Disputes
Act,1947 ('ID Act'), in this petition under Articles
226/227 of the Constitution of India.

The petitioner has challenged the order of the Labour

court, Surat dated 16.4.1996 in Recovery Applications Nos. 415/83, 128/84 and 164/85 whereby all the recovery applications under Section 33-C(2) came to be rejected, holding that the Labour court has no jurisdiction under Section 33-C of the ID Act for passing any order in such applications, without existing rights

A few material facts may be noted at the outset. The petitioner was working as Chief Typist with the respondent from 11.4.1961 to 11.5.1983. It is further the case of the petitioner that he was also discharging extra service of a clerk in the respondent company. Therefore, he claimed an amount of Rs. 98,380/- in Recovery Application No. 415/83, Rs. 1,00,834.87 in Recovery Application No. 128/84 and Rs. 1,366.11 in Recovery Application No. 164/85.

The respondent company appeared and resisted the Recovery Applications inter alia contending that the Labour court has no jurisdiction to straightway decide the recovery applications without adjudication. It is denied that the petitioner had to work as Chief Typist only. According to the case of the respondent company, the petitioner was promoted to the post of Joint Chief Typist and he was to work as typist as well as to work as a clerk. The petitioner was given all the benefits as per the settlement. It is also the case of the respondent company that the petitioner was paid over time as and when he had actually done over time work.

During the course of the proceedings, issue regarding jurisdiction of the Labour court under Section 33-C(2) came to be decided against the petitioner. Hence, this petition against composite order in all the three Recovery Applications under Section 33-C(2) of the ID Act.

After having examined the facts and circumstances and the relevant proposition of law, this court is satisfied that the impugned judgment and order recorded by the Labour court is justified. There is no dispute about the fact that the claims made by the petitioner in the three Recovery Applications are not adjudicated by any award or agreement. There is also no settlement in respect of the claims made in the said Recovery Applications. The petitioner was working as typist-cum-clerk and thereafter he was promoted as Joint Chief Typist from 1.6.1967. However, he claimed salary of a senior clerk. After considering the facts and circumstances, the Labour court dismissed all the Recovery Applications holding that there was no pre-existing right.

It must be remembered that Section 33-C relates to recovery of money due from an employer. The question which is raised in this petition is revolving round the interpretation and applicability of provisions of Section 33-C(2) . It would, therefore, be appropriate at this juncture to refer to provisions of Section 33-C of the ID Act which read as under :

"33-C . (1) Where any money is due to a workman from an employee under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is due. it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrears of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour court considers it necessary or expedient so to do, he may, for reasons to be recorded in

writing, extend such period by such further period as he ay think fit.

x x x x x x "

After amendment by Act 36/64, there are two parts of Section 33-C. The first part is concerned with money claims simpliciter and the second part speaks about in terms of money and any benefit to which a workman is entitled to. On the plain reading of words, it would transpire that when any workman is entitled to receive from employer any money and if any question arises as to the amount of money, then the question may be decided by the Labour court. The expression "if any question arise as to the amount of money due" embraces within its scope one or more of the following kinds of disputes:

- (i) Whether there is any settlement or award;
- (ii) whether any workman is entitled to receive from the employer money under any settlement or agreement or award etc; If so, what will be the rate of quantum of such amount;
- (iii) Whether the amount claimed is due or not.

It is settled proposition of law that proceedings under Section 33-(2) are as such in nature of execution proceedings and therefore, it does not involve any right of party to relief and corresponding liability of the other wide like that, whether other side is at all liable or not. A workman cannot forward a claim in an application under Section 33-C(2) in respect of a matter not based on an existing right. The labour court, therefore, would not be competent to decide the application of workmen where existing rights are not shown.

While interpreting provisions of Section 33-C, one is required to keep in mind two important and relevant considerations. The consideration should not be so broad as to bring within the scope of Section 33-C cases which would fall under Section 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the I.D. Act, as for example, by reference under Section 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly, having regard to the fact that the policy of the legislature in enacting Section 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing right. It would not be reasonable

to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workman. In other words, though in determining the scope of Section 33-C, we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under Section 10(1) of the Act, for example, cannot be brought within the scope of Section 33-C.

The principle discernible from the settled decisions may be stated. Whenever a workman is entitled to any benefit which is capable of being computed in terms of money and is denied such benefit, he can approach the Labour court under Section 33-C(2) for recovering both monetary as well as non-pecuniary benefits which can be computed in terms of money and which he is entitled to receive from his employer. The benefits sought to be recovered must necessarily be a preexisting benefit or the benefit flowing from a pre-existing right. It is, therefore, necessary to bear in mind the vital difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand. The former falls within the jurisdiction of Section 33-C (2) while the latter would not.

Any workman approaching the Labour court under Section 33(c) for enforcement of right or benefit must, therefore, be able to point out some pre-existing right or benefit which he seeks to enforce. If he seeks some new right or benefit in the conditions of service or some new benefit, neither acquired nor granted nor conferred by the ID Act, the workman ought to pursue remedy by way of a Reference under Section 10 of the ID Act and he cannot approach the Labour court under Section 33-C(2). In order to come within the purview of Section 33-C(2), the workman must be entitled to receive from the employer some money or benefit. This entitlement may depend upon adjudication of the right or may depend upon interpretation of certain existing right. If this entitlement depends upon adjudication of the right for the first time, then obviously, adjudication cannot come within the ambit of Section 33-C(2). If on the other hand, the right is patently available but has to be found only by reading of any document, settlement or award, that could be done within the scope of Section 33-C(2).

The petitioner in the present case filed recovery applications before the Labour court invoking aids of Section 33-C(2) without adjudication or any existing

right. The petitioner claimed some monetary benefits in the form of over-time work and resultant benefit without adjudication. Instead of pursuing proper remedy under Section 10(1) , he straightway filed recovery applications unde Section 33-C(2) without pre-existing right. Therefore, the impugned order of the Labour court rejecting all the three recovery applications and finding that it had no jurisdiction without existing right to the petitioner, does not warrant interference by this court.

In the result, this petiton is meritless and is, therefore, rejected at the threshold.
